No. 11907

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

JOHN R. QUINN, County Assessor, and H. L. BYRAM, County Tax Collector, of Los Angeles County,

Appellants,

vs.

AERO SERVICES, INC., a corporation, debtor,

Appellee.

PETITION FOR REHEARING.

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TABLE OF AUTHORITIES CITED

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To the United States Circuit Court of Appeals for the Ninth Circuit, and the Judges Thereof:

Now comes Aero Services, Inc., a corporation, appellee in the above entitled cause, and presents this its petition for a rehearing of the above entitled cause, and, in support thereof, respectfully shows:

I.

The question at issue is one of national importance in bankruptcy administration and the decision on which rehearing is herein sought enlarges what appellee believes to be the doctrine of *Arkansas Corporation Commission v. Thompson*, 313 U. S. 132, and as so enlarged will lead to

confusion in the administration of bankrupt estates, for the reason that the Bankruptcy Court, which is a court of equity, has the duty and responsibility to protect the rights of creditors as well as other parties in interest. Especially is this true after it receives the assets and assumes jurisdiction. The Bankruptcy Court and the assets being administered should not be affected by acts of other tribunals or by some default on the part of the bankrupt which the creditors, and their successor, the trustee in bankruptcy, have been unable to have determined on the merits by a competent tribunal. In other words, the default of the bankrupt permits creditors to be adversely affected and if they are bound by such default, without redress, assets of the estate to which they have a claim, after that of taxing agencies, will be reduced by arbitrary assessments which the bankrupt has permitted by reason of its laches.

II.

Prior to the decision of *Arkansas v. Thompson, supra,* the Supreme Court of the United States had supported the doctrine announced many times by the majority of the Circuit Courts that the Bankruptcy Courts had the power to fix and determine the amount and legality of tax claims. See *New Jersey v. Anderson,* 203 U. S. 483.

III.

The Supreme Court in the *Arkansas v. Thompson* case did not reverse *New Jersey v. Anderson, supra,* with respect to the statutory power of the Bankruptcy Court. The language of the opinion seems to have been carefully

limited to the particular facts in that case. There it appeared that the trustee in bankruptcy had chosen to seek relief from an alleged erroneous assessment through the State Agencies and the Courts, and after full hearing before those Agencies and Courts on the merits received an adverse decision. The trustee then sought to have the Bankruptcy Court relitigate the issues which he had fully presented to the State Courts. All that the Supreme Court decided in the *Arkansas v. Thompson* case was that upon these facts the taxpayer was not entitled to invoke the jurisdiction of the Bankruptcy Court. In the case of *Gardner v. New Jersey,* 67 S. Ct. 467, the facts are the same as in the *Arkansas* case. The taxpayer there had engaged in extensive litigation before both the State and Federal Courts and upon an adverse determination sought to invoke the jurisdiction of the Bankruptcy Court.

In the instant case the time for objecting to the assessment before the Board of Supervisors sitting as a Board of Equalization had not expired at the time of the bankruptcy proceeding. There had been no hearing, finding, or final order on the tax at the time of the bankruptcy by any State Agency or Court and the taxpayer never sought or had a hearing before the State Board of Equalization, or any other State Agency or Court, nor could he have had such hearing prior to the first Monday in July, 1946.

The taxpayer sought to have the amount of his tax liability determined by the Bankruptcy Court which under the Bankruptcy Act had exclusive jurisdiction of all of its

assets and of all claims of every kind and nature against them. It sought this relief under the express provision of Section 64-a of the Bankruptcy Act by reason of a lien created after bankruptcy against assets in possession of the Bankruptcy Court. It is submitted that the debtor cannot be deprived of that right by default in failing to seek relief before some quasi-judicial agency of lesser jurisdiction. Neither is there foundation for the defense of *res adjudicata* when the taxpayer has not been a party or appeared and had a hearing before any quasi-judicial or judicial body, which is the doctrine upon which the *Arkansas v. Thompson, supra,* and *Gardner v. New Jersey, supra,* are based.

IV.

The Bankruptcy Court has jurisdiction to pass upon the validity of a claim where the claim has been reduced under judgment in a State Court and the judgment has become final under the equitable powers of permitting unrepresented creditors to object to an improper claim, and jurisdiction is not lost by a default or a final judgment against the bankrupt company. See *Pepper v. Litton,* 308 U. S. 295.

V.

The law as stated by the Supreme Court in *Taylor v. Sternberg,* 293 U. S. 470, 55 S. Ct. 260, is set aside if default is made in applying to the quasi-judicial tribunal, and permits the creation of a lien against assets, to-wit: real property then in possession of the Bankruptcy Court.

The rule is stated in *Taylor v. Sternberg, supra,* as follows:

> "Upon such filing, the jurisdiction of the bankruptcy court becomes paramount and exclusive; and thereafter that court's possession and control of the estate cannot be affected by proceedings in other courts, whether state or federal. (Citing cases.) This applies while the possession is constructive as well as when it becomes actual."

Wherefore, upon the foregoing grounds it is respectfully urged that this Petition for a Rehearing be granted and that the judgment of the District Court, upon further consideration, be affirmed.

Respectfully submitted,

FRANCIS B. COBB,
Attorney for Appellee.

Certificate of Counsel.

The undersigned, Francis B. Cobb, attorney for appellee, does hereby certify that in his judgment the above Petition for Rehearing is well founded, and that it is not interposed for delay.

FRANCIS B. COBB.